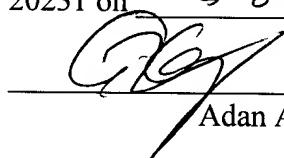


IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re application of: **Roger Q. SMITH**Serial No.: **09/153,621**Examiner: **T. Dinh**Filed: **September 15, 1998**Group Art Unit: **2841**For: **HEAVY-DUTY AUDIO EQUIPMENT**Assistant Commissioner for Patents
Washington, DC 20231

#13/Sypp.
Response
R. Tyson
5/21/01

RESPONSE TO OFFICE ACTION

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on 5-8-01



Adan Ayala

Dear Sir:

This is in response to the Office Action mailed March 14, 2001.

Currently in the application are Claims 1-6 and 15-20.

The Examiner has provisionally rejected Claims 1-6 under the doctrine of double patenting over Claims 21-27 of copending Application No. 09/262,751. This rejection is respectfully traversed. This is because Applicant has elected claims other than Claims 21-27 of the copending application, pursuant to a restriction requirement. Accordingly, the double patenting rejection has been rendered moot.

TECHNOLOGY CENTER 2900
MAY 15 2001
RECEIVED
U.S. PATENT AND TRADEMARK OFFICE

The Examiner has rejected Claims 1-6 under 35 USC § 112, second paragraph, for indefiniteness. This rejection is respectfully traversed.

In particular, the Examiner has asked whether the phrase “flexibly connected” in Claim 1 should be “flexible connecting.” In response, Applicant notes that the protective bar is flexibly connected to the housing. Therefore, no indefiniteness exists.

Similarly, the Examiner has asked whether the phrase “flexibly connecting” in Claim 3 should be “flexible connecting.” In response, Applicant notes that the connector assembly flexibly connects the protective bar to the housing. Therefore, no indefiniteness exists.

The Examiner has rejected Claims 1-6 under 35 USC § 103(a) as being unpatentable over US Patent No. 2,058,407 (“Brown”). This rejection is respectfully traversed.

Claim 1 calls for an audio equipment comprising a housing, audio circuitry installed within the housing, and a first protective bar flexibly connected to the housing.

Admittedly, Brown discloses a housing containing audio circuitry, and that the housing is connected to a leg assembly 14,15. However, this leg assembly is neither the protective bars called for in Claim 1, nor flexibly connected to the housing.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)). “*All* words in a claim must be considered in judging the patentability of that claim against the prior art.” *Id.* (quoting *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)) (emphasis added). In the present case, the Examiner has failed to show that the leg assembly is “protective.”

As discussed in the specification, the protective bar is provided to protect the housing from being destroyed at a jobsite because of: (1) tools being dropped on the housing; or (2) the radio falling down. In Brown, however, the leg assembly does not serve to protect the radio. For example, Applicant notes that FIG. 5 of Brown shows no protection for the housing surrounding speaker 6a against any side blows.

Accordingly, the leg assembly only serves to support the radio in place. Therefore, the leg assembly is not a “protective” bar as called for in Claim 1. Thus, Brown cannot render Claim 1 and its dependent claims unpatentable.

Even if the leg assembly is considered a protective bar, it is not flexibly connected to the housing. Brown instead discloses a pivotal connection between the housing and the leg assembly. See col. 2, lns. 38-51. Thus, Brown does not teach or suggest a flexible connection between the protective bar and the housing. Such flexible connection is important as it provides “play” between the protective bar and the housing to absorb part of all of the shock occurring when the radio is dropped. Brown instead teaches a pivotal connection with little play and high friction, so that the radio can remain in a tilted position. See col. 2, lns. 43-51.

Nevertheless, the Examiner chose to ignore Brown’s explicit teaching and relied on Fredman v. Harris-Hub Co., 163 USPQ 397 (N.D. Ill. 1969), for the flexible connection between the housing and the protective bar. However, the Examiner’s reliance on Fredman is improper under MPEP § 2144.04.

Under the MPEP, the Examiner may use the rationale used by the court “if the facts in a prior legal decision are sufficiently similar to those in an application under examination.” However, the facts of the present case and Fredman are not similar. In

Furthermore, Collins does not disclose a flexible gasket, which is part of a connector assembly flexibly connecting the protective bar to the housing, as called for in Claims 4-5. The Examiner points to stop ring 30. This ring 30, however, does not constitute part of a connector assembly flexibly connecting the protective bar to the housing. Accordingly, Brown and Collins cannot render Claims 4-5 unpatentable.

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 13 and 15-29 are respectfully requested.

No fee is due for the present amendment. Nevertheless, the Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



Adan Ayala
PTO Reg. No. 38,373
Attorney for Applicant

Adan Ayala - TW-199
The Black & Decker Corporation
701 East Joppa Road
Towson, Maryland 21286
(410) 716-2368



2841

Please type a plus sign (+) inside this box →

PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>		Application Number	09/153,621
		Filing Date	September 15, 1998
		First Named Inventor	Roger Q. Smith
		Group Art Unit	2841
		Examiner Name	T. Dinh
Total Number of Pages in This Submission		Attorney Docket Number	TN-1444

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Response	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below)
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Response to Office Action
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s)	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

TECHNICAL CENTER 2000
RECEIVED
MAY 11 2001
P-1

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

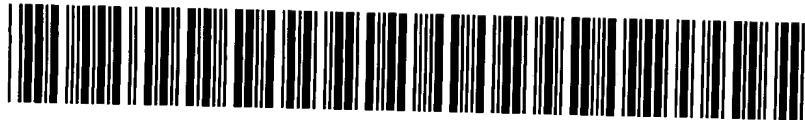
Firm or Individual name	Adan Ayala
Signature	
Date	May 8, 2001

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date:

Typed or printed name	Adan Ayala		
Signature		Date	May 8, 2001

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



Creation date: 10-12-2002
Indexing Officer: IS2 - Index Station 2
Team: CENTRALSCANPRINT
Dossier: 09153621

Legal Date: 31-07-2001

No.	Doccode	Number of pages
1	CTFR	7
2	892	1

Total number of pages: 8

Remarks:

Order of re-scan issued on